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REPORT OF THE SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Report of Mr. Ribot Hatano, Chairperson of the Sub-Commission at its fifty-first session, submitted in accordance with Commission resolution 1999/81

Introduction

1. In its decision 1999/256 of 27 July 1999, the Economic and Social Council endorsed the recommendation contained in the statement agreed on by consensus by the Commission on Human Rights at its fifty-fifth session, made by the Chairperson of the Commission on 29 April 1999, that the title of the Sub-Commission on Prevention of Discrimination and Protection of Minorities be changed to Sub-Commission on the Promotion and Protection of Human Rights. In its resolution 1999/81 of 28 April 1999, entitled "Work of the Sub-Commission on Prevention of Discrimination and Protection of Minorities", the Commission on Human Rights welcomed the further steps taken by the Sub-Commission to reform and improve its methods of work, including by the adoption of a restructured agenda at its fiftieth session and, in particular by making efforts to implement Sub-Commission decision 1996/114 to achieve a compilation of the existing rules of procedure and procedural questions to be resolved, by deciding to limit the initiation of new studies (decision 1996/113), by adopting criteria for new studies (decision 1997/112), by deciding to establish during its fifty-first session a sessional working group on the methods of work of the Sub-Commission (1998/108), and by enhancing its cooperation with all relevant bodies.

2. In the same resolution, the Commission requested the Sub-Commission to continue its efforts to avoid duplication with the work of the Commission and to further improve on its methods of work by:

(a) Focusing on its primary role as an advisory body of the Commission on Human Rights;

(b) Giving particular attention to the selection of studies, focusing its attention on how and where the implementation of existing standards could be improved;

(c) Respecting strictly the principles of independence, impartiality and expertise;

(d) In view of the budgetary situation of the Office of the United Nations High Commissioner for Human Rights, doing its utmost to limit requests for the creation of new working groups;

(e) Facilitating efficient and effective participation of non-governmental organizations;

(f) Considering fully studies and working papers by special rapporteurs and its members before sending them to the Commission;

(g) Focusing strictly on questions relating to human rights in accordance with its mandates.

3. The Commission requested the Chairperson of the fifty-first session of the Sub-Commission to report to the Commission at its fifty-sixth session on the results of the consideration of the methods of work of the Sub-Commission.

4. In accordance with that request, the Chairperson of the Sub-Commission submits the present concise report to the Commission. More details regarding the various aspects of the work of the fifty-first session of the Sub-Commission will, if necessary, be provided by the Chairperson of the Sub-Commission in his statement to the Commission at its fifty-sixth session. The report of the Sub-Commission on its fifty-first session is before the Commission in document E/CN.4/2000/2-E/CN.4/Sub.2/1999/54.

I. METHODS OF WORK OF THE SUB-COMMISSION

5. In response to the Commission's requests that the Sub-Commission enhance its efforts to improve on its methods of work, and that it devote sufficient time at its fifty-first session to discussion of its methods of work, the Sub-Commission established a sessional working group to consider its methods of work (decision 1999/102). The task of the working group was to consider and complete the examination of the final working paper on methods of work of the Sub-Commission submitted by Mr. Ribot Hatano, pursuant to Sub-Commission decision 1998/108 (E/CN.4/Sub.2/1999/2).

6. On the issue of the nature of the exercise undertaken with respect to document E/CN.4/Sub.2/1999/2 and the follow-up to be given to it, some participants in the sessional working group were of the opinion that the compilation of rules, as revised in the course of the discussion, should remain a document intended for the internal use of the Sub-Commission only. They also considered that no approval or endorsement of that document should be sought from the Commission on Human Rights and the Economic and Social Council. Reference was made in this connection to rule 24 of the rules of procedure of the functional commissions of the Economic and Social Council, which expressly provides that those rules should apply to the proceedings of subsidiary bodies "insofar as they are applicable". It was stated that the exercise by the working group was undertaken precisely, in line with rule 24, in order to apply, mutatis mutandis, the rules of the Economic and Social Council. Other participants, however, were of the view that the document should be submitted to the Commission and, eventually, to the Council, for information and possible comments or reaction. One participant was of the view that it would be wise to seek an opinion of the Legal Counsel.

7. In its decision 1999/114, the Sub-Commission decided to transmit to the Commission on Human Rights for its information the "Guidelines for the application by the Sub-Commission on the Promotion and Protection of Human Rights of the rules of procedure of the functional commissions of the Economic and Social Council and other decisions and practices relating thereto", resulting from the work of the sessional working group and contained in the latter's report (E/CN.4/Sub.2/1999/22).

II. RATIONALIZATION OF THE WORK OF THE COMMISSION AND THE SUB-COMMISSION

8. One of the constant concerns of the Sub-Commission in recent years has been to ensure a better review of its mechanisms aimed at enhancing its effectiveness. In this context, and in response to the recommendations made by the Bureau of the fifty-fourth session (1998) of the Commission on Human Rights regarding the rationalization of the work of the Commission and the Sub-Commission (E/CN.4/1999/104, paras. 55-56), the Sub-Commission at its fifty-first session held seven meetings devoted to that subject, during which it had a thorough discussion of its future tasks, length of sessions, methods of work, composition and the election of its members. The conclusions reached unanimously by the Sub-Commission on the above issues are contained in document E/CN.4/Sub.2/1999/47. Some of the conclusions are highlighted below:

9. With regard to its substantive tasks, the Sub-Commission reaffirmed its primary function as a "think-tank" of the Commission and considered that its main task in the future would be to assist in finding ways to ensure the full enjoyment of the established human rights. In this respect, the Sub-Commission was of the view that the major issues to be addressed by the Sub-Commission should be the following:

(a) The administration of justice (arbitrary detention, impunity, derogation, emergency, independence of judges, etc.), especially with regard to implementation of standards in this field;

(b) The establishment of a social forum to facilitate more comprehensive and effective work on economic, social and cultural rights;

(c) Examination of the impact of globalization, including the methods and activities of transnational corporations and their relationship to the implementation by Governments of human rights, the human rights implications of structural adjustment and the right to development;

(d) Prevention of discrimination and the promotion and protection of the rights of minorities and peoples, including indigenous peoples;

(e) Prevention of discrimination against migrants and others non-citizens.

10. Insofar as its functions and methods of work are concerned, the Sub-Commission agreed on the following points:

(a) Improvement of cooperation with other human rights bodies. Broader and systematic consultation with other United Nations and regional human rights bodies should be ensured;

(b) Improvement in the programme of studies: selection, preparation and examination. The Sub-Commission had undertaken a reform of its programme of studies and endorsed the recommendations made by the Commission and its Bureau (E/CN.4/1999/104, recommendation 12 (d)). The subjects of studies would be chosen to meet the needs of the Commission and the treaty bodies and to explore core issues on the human rights agenda at the beginning of the new century. One type of study would examine obstacles to the implementation of human rights and ways to overcome them; a second type would identify situations or phenomena, existing or developing, with serious actual or potential implications for human rights, in order to obtain the knowledge required to propose appropriate responses. The revisions to the programme of studies were set out in the Guidelines for the application by the Sub-Commission of the rules of procedure of the functional commission of the Economic and Social Council, finalized at its fifty-first session (E/CN.4/Sub.2/1999/22, annex);

(c) Country situations. Several members of the Sub-Commission favoured the proposal of the Bureau (recommendation 12 (e) (i)) that instead of the country-specific resolutions the outcome of the annual debate of the Sub-Commission on human rights violations in all parts of the world should be a summary for submission to the Commission. One member expressed a preference for the annual debate on country situations to be abolished, but if it was retained, country-specific resolutions were preferable. Other members argued that the Sub-Commission should become more even-handed in identifying situations to be the subject of resolutions. The majority suggested that the Sub-Commission should continue to apply its expertise to country situations not under consideration at the Commission on Human Rights by adopting country-specific or thematic resolutions, decisions or statements by the Chair. The Sub-Commission should use such authority with restraint, however. In that context it should seek dialogue and cooperation with Governments, giving preference to the prevention of human rights violations, and ensure objectivity in the choice of situations addressed;

(d) Resolutions and decisions under other agenda items. The Sub-Commission assumed that the recommendation by the Bureau to avoid resolutions related only to the agenda item on violations in any country, and was not intended to recommend the abolition of resolutions and decisions under other agenda items;

(e) 1503 procedure. The Sub-Commission was of the opinion that the 1503 procedure should be maintained in its current four-stage form, but that there was room for improvement. The Sub-Commission agreed with the views put forward by the Working Group on Communications, as contained in annex I to document E/CN.4/Sub.2/1999/47;

(f) Working groups. The Sub-Commission endorsed recommendation 12 (e) (ii) that the inter-sessional Working Group on Minorities should continue and that the Working Group on Indigenous Populations should continue until such time as the permanent forum for indigenous people within the United Nations system had been established. The Sub-Commission did not, however, endorse the proposal that the Working Group on Contemporary Forms of Slavery be terminated. That would eliminate a useful forum for non-governmental organizations committed to the prevention or abolition of some human rights violations of considerable contemporary significance and seriousness.

11. Many members of the Sub-Commission were ready to accept the recommendations of the Bureau of the Commission that:

(a) The term of members should be four years, renewable only once;

(b) Members shall not serve concurrently in posts in the executive branch of their Governments. However, questions were raised in this regard, such as whether a professor at a national university would be eligible to serve on the Sub-Commission and if a member of the Sub-Commission would be obliged to resign if he or she were appointed to such a post.

12. On the other hand, however, the overwhelming majority of the Sub-Commission were firmly convinced that:

(a) The membership of the Sub-Commission should not be decreased from the current 26 to 16;

(b) The members of the Sub-Commission should not be appointed by the Chairperson of the Commission but should be elected by the Commission as heretofore;

(c) The duration of the annual session of the Sub-Commission should not be shortened from the current four weeks to two;

(d) The current system of "alternates" should be maintained.

13. With regard to observation 27 made by the Bureau of the Commission that "the Sub-Commission is by far the most expensive of the Commission's subsidiary mechanisms, the cost of its annual session being higher than that of the Commission itself", the Sub-Commission referred to a table annexed to document E/CN.4/Sub.2/1999/47 (annex II) setting out a comparison of the total annual costs (in United States dollars) of the sessions of the Commission and the Sub-Commission, as provided by the Office of the High Commissioner for Human Rights. According to this document, the total comparative meeting costs are as follows:

Account description	1998	1999	Total
Commission on Human Rights	6 034 159	6 067 668	12 101 827
Sub-Commission	2 164 922	2 216 457	4 381 379

III. STUDIES, REPORTS AND NEW SUBJECTS

14. The Sub-Commission welcomed the final report of the study on treaties, agreements and other constructive arrangements between States and indigenous populations, submitted by Mr. Miguel Alfonso Martínez (E/CN.4/Sub.2/1999/20).

15. Five studies and reports entrusted to special rapporteurs in accordance with existing legislative authority are under way on the following subjects: (a) the concept and practice of affirmative action; (b) traditional practices affecting the health of women and the girl child; (c) updated report on systematic rape, sexual slavery and slavery-like practices during armed conflict, including internal armed conflict; (d) indigenous peoples and their relationship to land; (e) human rights and terrorism.

16. Furthermore, the Sub-Commission entrusted a number of experts with the task of preparing and/or updating the following working papers: (a) realization of the right to education, including education in human rights; (b) promotion of the realization of the right to drinking water supply and sanitation services; (c) review of international standards on slavery; (d) human rights problems and protection of the Roma; (e) observance of human rights by States not parties to the United Nations human rights conventions; (f) globalization and its impact on the full enjoyment of all human rights; (g) adverse consequences of economic sanctions on human rights; (h) implementation of the Guidelines on HIV/AIDS. As in the past, all working documents will be prepared by experts without financial implications.

17. The Sub-Commission recommended to the Commission that the following studies and reports be entrusted to new special rapporteurs: (a) the rights of non-citizens (special rapporteur to be appointed); (b) globalization and its impact on the full enjoyment of all human rights (Mr. Joseph Oloka-Onyango and Ms. Deepika Udagama); (c) reservations to human rights treaties (Ms. Françoise Hampson).

IV. EVALUATION OF THE WORK OF THE SUB-COMMISSION AT ITS FIFTY-FIRST SESSION

18. Four inter-sessional working groups met prior to the fifty-first session of the Sub-Commission: the Working Group on Communications, the Working Group on Indigenous Populations, the Working Group on Minorities and the Working Group on Contemporary Forms of Slavery. The Sub-Commission also established two sessional working groups: the working group on the working methods and activities of transnational corporations and the working group on the methods of work of the Sub-Commission. Furthermore, the Sub-Commission decided not to establish a sessional working group on the administration of justice at its fifty-first session and to consider the matter at its next session. It is worth underlining that further consideration should be given to improving the substantive relationship between the Sub-Commission and its working groups. Continued support and encouragement should be given to these working groups in the accomplishment of their tasks.

19. At the fifty-first session the Sub-Commission held 27 public meetings, in response to the Commission's request not to hold more than 30 public meetings, and 7 closed meetings. Approximately 1,200 persons, including some 800 persons representing non-governmental organizations, attended the session. A total of 200 documents were issued, amounting to 2,699 pages.

20. The Sub-Commission adopted 30 resolutions and 17 decisions. It agreed on six Chairperson's statements, most of which were made under the agenda item dealing with the question of the violation of human rights and fundamental freedoms in all countries. Furthermore, in view of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance to be held in 2001, the Sub-Commission made a number of proposals and recommendations to the Commission and to the Preparatory Committee for the World Conference. With reference to economic, social and cultural rights, the Sub-Commission adopted decisions and resolutions relating to eight topics, inter alia globalization and its impact on the full enjoyment of all human rights, housing and property restitution in the context of the return of refugees and internally displaced persons, the convening of a social forum, and the right to adequate food and to be free from hunger. On civil and political rights, the Sub-Commission took action on a number of issues, such as violations of the rights of human rights defenders in all countries, the death penalty, in particular in relation to juvenile offenders, the prevention of discrimination against and the protection of minorities, and the draft international convention on the protection of all persons from enforced disappearance.

21. Furthermore, it is encouraging to note the growing awareness of the issue of human rights with regard to women, in particular with regard to traditional practices affecting the health of women and the girl child. In this connection, the Sub-Commission adopted three resolutions relating to: (a) traditional practices affecting the health of women and the girl child (resolution 1999/13); (b) the situation of women and girls in Afghanistan (resolution 1999/14), and (c) women and the right to development (resolution 1999/15). The question of systematic rape, sexual slavery and slavery-like practices was also discussed extensively by the Sub-Commission.

22. The Sub-Commission at its fifty-first session has embarked upon a project of reforms by responding in a careful way to the requests made by the Commission on Human Rights for the rationalization of its work. It has spared no effort to look into ways and means in order to ensure the effectiveness of its methods of work and, in this respect, made a number of comments and proposals to the Commission. It is hoped that positive feedback would ensue. The coherence and overall effectiveness of the Commission and the Sub-Commission would be determined by their respective capacity to confront and respond to the new challenges facing us in the new millennium. As always, the Sub-Commission is ready to fully play its role as part of the United Nations human rights mechanisms to achieve all of its purposes in the field of human rights.